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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,424	06/27/2001	Royan Herbert Bartley	ROC920000298US1	2822
24038	7590	05/27/2005	EXAMINER	
MARTIN & ASSOCIATES, LLC P O BOX 548 CARTHAGE, MO 64836-0548			LUU, LE HIEN	
			ART UNIT	PAPER NUMBER

2141

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,424

Applicant(s)

BARTLEY ET AL.

Examiner

Le H Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02/08/05 - 02/22/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 02/22/05. 6) ☐ Other: _____

1. Claims 1-22 are presented for examination.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-22 are rejected under 35 U.S.C. § 102(e) as being anticipated by Duimovich et al. (Duumovich) Pub. No. 2002/0052947.

4. As to claims 5, Duimovich teaches a networked computer system comprising:

(A) a first computer system (Director Server Site 120, figure 1; page 2 para [0033]);

(B) a second computer system coupled to the first computer system via a network (end user site 50, figure 1; page 2 para. [0033], the second computer system comprising:

(B1) a performance data collection mechanism that collects performance data for the second computer system (page 2 para. [0033]);

(B2) a performance data transmission mechanism that, when enabled, transmits at least a portion of the performance data to the first computer system (page 2 para [0033]; page 5 para [0057]); and

(B3) a performance data access mechanism that allows access to the performance data by a user of the second computer system only if the performance data transmission mechanism is enabled (page 3 para [0039-0041]; page 6 para [0066-0082]).

5. As to claims 6, Duimovich teaches the first computer system comprises a vendor computer system and the second computer system comprises a customer computer system (page 3 para [0036]).

6. As to claims 7, Duimovich teaches performance data comprises data collected by an operating system (page 3 para [0037]; and tables 1-2 begin on page 3).

7. Claims 1-4 and 8-11 have similar limitations as claims 5-7; therefore, they are rejected under the same rationale.

8. In the remarks, applicant argued in substance that

(A) Prior art does not teach a performance data access mechanism that allows access to the performance data by a user of the second computer system only if the performance data transmission mechanism is enabled.

As to point (A), Duimovich teaches Client Application 70 is a collection of files that reside on the User Site 50 for the purpose of collecting, in the preferred embodiment, web browser-based HTTP performance data and transmitting that data to the Director Server 120. The Client Application 70 comprises three main components, a Network Interface Monitor (NIM) 175, a Shared memory module (Shmem) 180 and an Agent 185. The NIM 175 captures Internet Application 60 communications to the User Site's network interface. The NIM 175 creates a message for each communication containing raw performance data. The NIM 175 then writes the message in a shared memory segment through the Shmem 180 API so that it may be read by the Agent 185 via the Shmem 180 API. Communication between the Agent 185 and Authority Server 100 permits the refreshing of the Agent's configuration information and automatic updating of the Client Application 70. There is value in utilizing page summary data beyond simply transmitting it to the Director Server. Agent Plug-in threads may be used for example to analyze page summary data to determine if a particular host is

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performing below specified thresholds (e.g. throughput). User Site 50 may be operated as a remote monitoring service to provide: advanced logging output (e.g. web server log format); triggering trace route analysis; triggering server ping analysis; or triggering alarms (e.g. via email). Therefore, Duimovich teaches allowing access to the performance data by a user of the second computer system only if the performance data transmission mechanism is enabled (page 3 para [0039-0041]; page 6 para [0066-0082]).

Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."). Therefore, limitations that are argued by applicant but are not in claimed language are not being considered by Examiner.

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9. Applicant's arguments filed on 02/08/2005 have been fully considered but they are not deemed to be persuasive.

10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

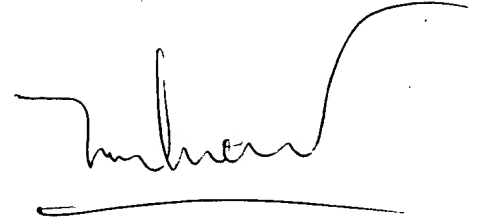
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H Luu whose telephone number is 571-272-3884. The examiner can normally be reached on 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Le Hien Luu', with a horizontal line underneath.

LE HIEN LUU
PRIMARY EXAMINER

May 24, 2005